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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/778,490 | 02/07/2001 | Pardip K. Vaid | 5001-355 | 8061 |

7590 06/26/2003

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EXAMINER

JOHNSON, STEPHEN

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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3641

DATE MAILED: 06/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/778,490

Applicant(s)

VAID, PARDIP K.

Examiner

Stephen M. Johnson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,9-12 and 16 is/are rejected.
- 7) ☒ Claim(s) 3-8 and 13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

firing position

2. Claims 1-2, 9-11, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by

Tuma et al..

Tuma et al. disclose a semi-automatic firearm comprising:

- a) a magazine, see fig. 1
- b) a frame with magazine well, 11
- c) a slide with ejection port, see fig. 1
- d) a striker firing-pin assembly, 14
- e) a firing mechanism including trigger, trigger bar, 5, 6, 3
sear, and
- f) an access port. adjacent 14 (rear) contains
4 when hammer is in the
firing position

3. Applicant's arguments are addressed as follows. It is argued that Tuma's opening is an opening in the frame and not an opening in the slide. This is not convincing. The opening in the slide is the open rearward portion of slide 1, adjacent firing pin 14, that contains hammer 4 in fig. 1. This opening is clearly in the slide 1. In fact when the slide moves backwardly after firing a cartridge the hammer is pivoted out of this opening in the slide 1 as the slide moves rearward. If this opening were not attached to the slide and was attached to the frame, there would be no way

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to move the hammer to its retracted position and fire the weapon. With regard to the argument directed to the opening for the firing pin 14, it is not the opening for the firing pin which is being relied upon, it is the opening in the rear of the slide adjacent the firing pin that is being relied upon. It is further argued that Tuma is silent as to any opening in the slide that may be in communication with the sear mechanism. In response, since the drawings are part of the Tuma reference and clearly show an aperture in the rear of the slide (see figs. 1 and 2) and since this aperture is in close proximity to sear 3, this claim feature is clearly met. It is argued that the drawing line above reference numeral 3 in fig. 2 illustrates the structural isolation of the hammer opening. It appears that applicant is referring to the line that forms the bottom surface of the slide 1 and this bottom surface does not serve to isolate the hammer opening. It is further argued that Tuma's hammer 4 defines a slot, this is not what the examiner is relying upon to meet this claim limitation. The rear of slide 1 defines a slot to accommodate movement of hammer 4 to contact firing pin 14. With regard to the argument that the slot of Tuma only provides access to the area behind the slide, this cannot be accurate for several reasons. Firstly, the drawings show only open space (absent hammer 4) in this area (see figs. 2 and 4). Secondly, a certain amount of open space must be provided in both the rear of the slide 1 and the rear portion of the frame for hammer 4 to pivot from a retracted position held in place by sear 3 and a release position where hammer 4 is in contact with firing pin 14. With regard to applicant's argument that the terms slide and frame must be given their meaning as known in this art, the examiner agrees. Slide 1 and its rearward access opening meet the claim limitation directed to a slide. Frame 11 with its associated magazine well meet the claim limitation directed to the term frame. With regard to the

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argument directed to the term an ejection port, note that this feature is not claimed. However, fig. 1 of Tuma illustrates this feature.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tuma et al. in view of Thomas.

Toma et al. apply as previously recited. However, undisclosed is a magazine safety that interacts with the firing mechanism. Thomas teaches a magazine safety that interacts with the firing mechanism (see col. 7, lines 24-30). Applicant is selecting and assembling a safety device and assembling it as it is commonly known to function in this art. It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of Thomas to the Toma et al. firearm and have a firearm with a magazine safety device.

6. Claims 1-2, 9-11, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Vitorino.

Vitorino discloses a semi-automatic firearm comprising:

- | | |
|-----------------------------------|------------|
| a) a magazine, | inside 14 |
| b) a frame with magazine well, | 14 |
| c) a slide with ejection port, | see fig. 1 |
| d) a striker firing-pin assembly, | 28 |

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e) a firing mechanism including trigger, trigger bar, 36, 44
sear, and

f) an access port. portion of 16 that contains 60
(see fig. 2)


7. Claims 3-8 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Applicant's arguments, filed on 6/10/2003, with regard to Tuma et al., have been fully considered but they are not persuasive. These arguments have been addressed in paragraph 3 above.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Johnson whose telephone number is 703-306-4158. The examiner can normally be reached on Tuesday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 703-306-4198. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3597 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-4177.



STEPHEN M. JOHNSON
PRIMARY EXAMINER

Stephen M. Johnson
Primary Examiner
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